

**MINUTES**  
**POLICY ADVISORY OPINION COMMITTEE MEETING**  
**TEXAS BOARD OF PROFESSIONAL ENGINEERS**  
**1917 IH35 SOUTH**  
**AUSTIN, TX 75034**  
**August 20, 2009—9:00 AM**

**CALL TO ORDER.** Committee Chair Gary Raba, D. Eng., P.E., called the Policy Advisory Opinion Committee meeting to order at 9:06 a.m., on August 20, 2009, at the Texas Board of Professional Engineers, 1917 IH35 South, Austin, TX. (Note: All votes are unanimous unless otherwise indicated.)

**1. Roll call and welcome visitors.**

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| Gary Raba, D. Eng., P.E. | Chair  |
| Edward L. Summers, Ph.D. | Member |
| Daniel Wong, Ph.D., P.E. | Member |

A quorum was present. Jeb Boyt, Assistant Attorney General and Veena Mohan, Assistant Attorney General were present to provide legal counsel.

The following staff members were present:

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| Dale Beebe Farrow, P.E.  | Executive Director                   |
| Lance Kinney, P.E.       | Deputy Executive Director            |
| C.W. Clark, P.E.         | Director of Compliance & Enforcement |
| Charles Pennington, P.E. | Engineer Specialist                  |
| Tyler Ferguson           | Investigator                         |
| Dorothy Nieto            | Executive Assistant                  |

**Visitors.** Peyton McKnight, Esq., Texas Council for Engineering Companies; Jeff Mattson, Corrosion Company; Bill Fenley, P.E., TSPE; Sandee Howell, P.E., TSPE; Jim Winton, P.E., TSPE; Trish Smith, Executive Director, TSPE; Chris Craven, Esq., DFW Airport.

Mr. Clark formally introduced Mr. Tyler Ferguson to the Committee as the new TBPE Investigator.

**2. Public comment.** None.

**DISCUSS AND POSSIBLY ACT ON THE FOLLOWING ITEMS:**

**3. Discuss and possibly approve the June 17, 2009, minutes from the Policy Advisory Opinion Committee meeting.**

It was MOVED/SECONDED (Wong/Summers) to approve the June 17, 2009, Policy Advisory Opinion minutes. A vote was taken, and the MOTION PASSED.

**4. Policy Advisory Opinion Status Report**

Mr. Clark reviewed the list of the Policy Advisory Opinions (PAO) currently received by the Board. He added that the PAOs would be discussed further during the meeting.

**5. EAOR # 7 – Construction Materials Testing – Review of any comments from the Texas Register posting of the amended opinion. To be considered for acceptance and submit to the Board for final approval.**

The proposed change separates the Frequently Ask Questions (FAQ) from the body of the policy advisory opinion and modifies one of the FAQs by removing “for acceptance purposes” on question #2.

The policy advisory opinion was posted in the Texas Register and on the TBPE web site. The Board did not receive any comments.

It was MOVED/SECONDED (Summers/Wong) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009 to approve EAOR#7. A vote was taken, and the MOTION PASSED.

6. **EAOR #23 – Engineering Aspects of Facilities Assessment – Review of any comments from the Texas Register posting of the draft opinion and possible consideration for acceptance and submission to the Board for final approval.**

This Policy Advisory was posted in the Texas Register and on the TBPE website. Mr. Pennington reported that the Board did not receive any comments.

Dr. Raba asked if an outreach had been scheduled to discuss this policy advisory. Mr. Clark responded that a stakeholders' meeting was not held, but key people that would be affected by the policy advisory were involved.

It was MOVED/SECONDED (Summers/Wong) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to approve EAOR #23. A vote was taken, and the MOTION PASSED.

7. **EAOR #24 – Procurement of Engineering Services of Public Projects – Review of any comments from the Texas Register posting of the draft opinion and possible consideration for acceptance and submission to the Board for final approval.**

Mr. Pennington reported that this was a specific request from the Dallas Ft. Worth International Airport Board regarding procuring engineering and ancillary engineering services, i.e. trench safety plans, traffic control plans, and temporary structures. The policy advisory opinion was posted in the Texas Register and on the TBPE web site. The Board did not receive any comments. Staff recommends approval.

Mr. Chris Craven with DFW addressed the Committee on behalf of Mr. Matt Ryan. The DFW Board expresses their gratitude for the Board's consideration and time working with them regarding this policy advisory.

It was MOVED/SECONDED (Summers/Wong) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to consider the Committee's request and approve EAOR #24. A vote was taken, and the MOTION PASSED.

8. **EAOR #25 - Licensure requirements for corrosion control services for water transmission and distribution pipelines. Presentation and discussion of research material gathered related to this request. Consideration for acceptance or rejection.**

Mr. Pennington was asked by the Committee to conduct additional research on this policy advisory. The research findings show that the Texas Commission on Environmental Quality (TCEQ) Chapters 334 and 335 are specific in the design of petroleum storage tanks and distribution pipelines. These rules specifically allow the use of a National Association of Corrosion Engineers (NACE) certified specialist to design the corrosion control system. However, in Chapter 290, the public drinking water systems and the design and licensing of these systems which has no specific language in the statute regarding a NACE certified specialist for corrosion protection system design. The TCEQ issues licenses for water system operators and also directs the design of public water system. The TCEQ has four types of operator licenses for anyone operating a water system. Most water systems are operated in the a, b, or c, category. The operator of the system has to be licensed to the appropriate level, recognize and

understand what causes corrosion in the water system, and how it should be prevented. All the plans for public water systems must be designed according to the American Water Works Association guidelines and specific corrosion protection guidelines. The manual does not specifically state who does the corrosion protection. The TCEQ rules do require the design of the corrosion protection system but do not specify that a NACE certified technician may do the work. Staff recommends the requestor contact TCEQ for a ruling regarding the acceptance of a NACE certified technician to do the corrosion protection system design.

Mr. Mattson addressed the Committee to ask for clarification under the rules which require the signature and seal of an engineer. He added that it is very difficult to find an engineer that has this type of experience and there are no specifics for getting licensed as a corrosion engineer. He suggested an exemption from sealing and signing corrosion protection systems for persons that work on these designs. Mr. Mattson agrees that this subject needs further clarification.

Mr. Pennington mentioned that TCEQ has specific design guidelines and rules regarding public water systems. The TBPE regulates engineering in general but TCEQ has specific water system design and licensing guidelines.

The requestor is requesting clarification from the Committee specifically to address if corrosion protection services are engineering services. He is concerned that there may be engineers that are signing and sealing water system designs that are not experienced in this subject. Mr. Kinney mentioned that if an engineer is not competent in that field, they must be reported to the Board.

Mr. Pennington informed the Committee that several corrosion protection systems are pre-manufactured products incorporated into an engineering design. Perhaps TBPE could have some language to address these products.

Mr. Mattson summarized the six components that go into corrosion protection system design. The question is can a certified NACE technician work under the supervision of a professional engineer? Mr. Mattson gave an example of his experience of working under a professional engineer. Dr. Summers suggested the TBPE may consider having some type of mechanism that allows a competent engineer to hire a technician licensed under TCEQ to work on water corrosion design.

Staff was directed to refine the specific question regarding the engineering aspects of corrosion protection and clarify whether a corrosion specialist may work under the supervision of a licensed professional engineer to perform these services.

Mr. Clark added that the Board does not have any jurisdiction regarding city requirements for engineers to certify/seal work that is not classified as engineering.

**9. EAOR #26 – Request for Board’s opinion on what defines a structure as being a hazard or unsafe for the purpose of local code enforcement. Consideration of staff response or acceptance as an opinion request.**

The requestor asked the Board’s opinion regarding what defines an unsafe structure for the purpose of local code enforcement. Staff analysis of the statute concludes that although the Board is chartered with the protection of the health, safety, and welfare of the public, it performs its function by licensing people that write and interpret the building codes. While the Board regulates the professionals that write and interpret the codes, the Board itself does not have the jurisdiction to interpret a building code on its own. Staff recommends no action on this agenda item. A proposed response is included for the Committee’s approval. Mr. Pennington will reference the Committee’s action and the date of the PAOC meeting in the letter.

Dr. Raba directed staff to send the letter with the modification Mr. Pennington mentioned.

**10. EAOR #27 – Request for advisory opinion regarding Storm Water Pollution Prevention Plans and Erosion and Sedimentation Control Plans. Consideration for acceptance or rejection.**

Mr. Pennington reviewed the engineering aspects of the Storm Water Pollution Prevention Plans, and opined what part is engineering. Staff research includes an example of a Storm Water Pollution Prevention Plan as an exhibit. Plans are mandated by the Environmental Protection Agency, the City of Austin, and TCEQ. The plan includes assessment of the pollution sources, what kind of measures are needed to control runoff from rain/snow, and a plan in place to maintain the structure and improve them if needed. The actual engineering involved in this planning is the calculation of the runoff. In the particular plan included as an exhibit, the structural controls were already in place when the airport was constructed. This request came about because the City of Austin requires an erosion control specialist to also certify the plan.

Mr. McKnight mentioned to the Committee that during the Legislative Session, statutory language was changed in the Engineering Practice Act because of this specific problem. The new language in 1001.401 (e) now states that a license holder shall not be required to provide or hold any additional certification other than a license to seal an engineering plat, spec, report, etc. Mr. McKnight is asking whether or not any portion of these plans is engineering. Even after the new language was passed, the City of Austin still requires that an erosion control specialist approve the plans. If a portion of any project that will go out for bid is engineering then the bidding process must follow the QBS requirements; the same applies to this portion. Mr. McKnight requested the Committee accept this request and possibly consider a stakeholder meeting to discuss what aspects of Erosion and Sediment Control Plans are engineering. Once a determination has been made then the new statute may or may not apply to this element.

Dr. Wong would like to clarify that the Board does not have jurisdiction over the City of Austin's requirements. Mr. McKnight said that if there are two different aspects, then they must be separated.

It was MOVED/SECONDED (Wong/Raba) to accept EAOR#27 and directed staff to hold stakeholders meetings to define what engineering is involved in SWPPPs, how additional certification fits in; and informs the city of Austin if they are getting bad sets of drawings then there is another direction they may take. A vote was taken, and the MOTION PASSED.

Mr. Boyt asked if the City of Austin sent a response as to why the 1001.401 (e) does not apply. Mr. McKnight said he has not personally had this discussion with them. Mr. Boyt mentioned that this may also fall under the Geoscientist jurisdiction. Ms. Howell addressed the Committee informing them that the City of Austin that all the calculations have to be sealed by a professional engineer. Ms. Howell did mention to the City of Austin that engineers working outside their discipline should be reported to the Board. Mr. Clark asked the Committee to assign a liaison to attend the stakeholders' meeting. Dr. Raba agreed that he would be the liaison to work with staff.

**11. Issues for consideration and schedule next meeting.**

**ADJOURN.**

The Chair adjourned the meeting at 10:05 a.m.

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| Date Committee approved the minutes as submitted: | November 19, 2009 |
| Date Board accepted the minutes:                  | November 19, 2009 |